LECTURE

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LECTURE

ON THE

WORKMEN'S COMPENSATION ACT OF QUEBEC

TO

THE JUNIOR BAR ASSOCIATION OF MONTREAL

BY

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19TH JANUARY 1915

Ottawa Printing Co. Limited

TABLE OF CASES.

The Workmen's Compensation Act.

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Nature of Statute.

It is always important to remember that the obligations imposed by this Act arise out of a contract, and not *ex delictu* or *quasi ex delictu*. It is not an amendment of, or addition to, that part of the Code which treats of damages arising from offences or quasi offences, but is an extension of the Law concerning the lease and hire of work under Articles 1667 to 1670 of the Code.

The case of Vincent and G. T. Ry., 45 S. C. 353, is abundant authority for this contention.

You will remember that in the case of Dupont vs. Quebec S.S. Co., 11 S. C. 188, the action was based upon an accident which happened in the Port of Trinidad, aboard one of the defendant's ships, to a sailor who had been hired in the Port of Quebec. Under the laws of Trinidad, no right of action existed in his favour because of the accident, but the Court of Review held that his rights were governed by the laws of the Province of Quebec, where he had been hired, and, in any case, would be governed by the law of England, as the accident happened upon a registered British vessel.

This decision was received with some astonishment at the time, and has since been overruled in the case of G. T. Ry. and Merleau 21 K. B. 269, where it was definitely held that in all cases arising out of delicts, or quasi delicts, the law applicable was that of the place where the offence or quasi offence had been committed.

If this new Act was in any way connected with the law of offences and quasi offences, the judgment in the

case already referred to of Vincent vs. G. T. Ry. would not stand.

In a case of Mitchell vs. Fessenden, 43 S. C. 516, the Court of Review held that a boy under 16 years of age who had been hired to work in a factory, contrary to the provisions of the Industrial Act, had a right of action under this law for the indemnity due to him because of the loss of his forearm in a sawmill.

The Superior Court, in Boutin vs. Corona Rubber Co., 41 S. C. 519, had previously decided that no action would lie in similar circumstances, because the hiring of the boy was contrary to public order, and no claim could be made under this law without a valid contract of hiring being in existence.

The Learned Judge, in this latter case, evidently had overlooked section 3866 of the Revised Statutes, which states that the liabilities of the master towards the employee are not affected by the Factories Act.

Further evidence of this proposition might be found in the case of Touchette and Dominion Textile Co., 15 P. R. 298, in which it was held that a minor could sue under the Act, without the assistance of a tutor, in as much as Article 304 of the Civil Code gives such right to a minor for all actions arising from the contract for the hire of his personal services.

There is a wide difference between the contract of hire of personal services, and the contract by which builders and others undertake works by estimate and contract, and this difference must be noted, as contractors cannot have recourse to this law.

Gagnon and Demers, 20 R. L. n. s. 451.

In Syljovick vs. O'Brien, (1913), Mr. Justice Guerin held that the plaintiff could not avail himself of the benefit of the Act because he was a contractor, and not a workman. Syljovick had undertaken, with some other com-

rades, to complete a certain portion of a railway at a certain rate per mile, and was not under the control of O'Brien during the work.

In Beaulieu vs. Picord, 42 S. C. 435, a case where a man undertook to drill rock at a price per foot, but was obliged to work as an ordinary workman when he was not busy with the drill, it was held that the employer had full control over the work and over the man, and that the Act was applicable.

Of course, the contract of hiring may be verbal or written, express or implied, and the fact of the workman having worked under the direction and control of the employer suffices to prove a contract of hire by inference.

In a recent case of Cooney vs. Morel, 45 S. C. 458, the defendant denied ever having hired the plaintiff's husband, who had been killed in an accident; and also denied that he knew at the time that he had been working with his other men. It appeared in evidence that the plaintiff's husband had been hired by an agent of Kirby & Co. to work on the construction of a dam in the Upper Ottawa country; that he was advanced part of his wages, and started, with some others, in the direction of his work. When the other workmen reached their destination he was lying helplessly drunk on the floor of the car, and was left there by his companions. Further on, the conductor of the train managed to awaken him, and asked him where was his destination, and he was said to have then told the conductor that he had been hired by the defendant, whose works were still further up the line. When the defendant's works were reached, he was carried helplessly off the train and left by the side of the track. When he recovered his senses, he told the foreman in charge of the works that he had been sent up by the defendant to work there, and the foreman, who had no authority to hire anyone, put him to work on the

strength of this assertion. The next day he was killed, and it was sought to prove the contract of hiring by the testimony of the plaintiff, who said that the defendant had told her he had himself hired the deceased, all of which defendant denied.

The Court of Review dismissed the action, which had been maintained by the Superior Court, because there was no valid proof of any contract of hiring to be found in the Record.

Reference might be made here to that clause of the Act, 7337, which says that it is inapplicable to workmen who usually work alone. Carpenters or other mechanics who usually work alone do not become employers by reason of their casually calling others to their assistance for the purpose, for instance, of raising a beam, or doing some other work which requires the strength of more than one person.

It has been held, however, that a butcher keeping a slaughter house and assisted by one man alone and doing a very small business, comes within the Act.

Thorne vs. Roy, 41 S. C. 305.

Accident.

In order to make the law applicable, there must not only be a contract of hiring, but there must have been an accident.

The French Official Circular says that an accident is bodily injury arising from the sudden action of an external cause.

Sachet defines it as the unfortunate result arising out of the sudden action of a violent, fortuitous and external cause.

In Fenton and Thorley, the House of Lords in England informed us that the word is to be taken in its ordinary and popular sense.

In Hamlyn and Crown Accident Ins. Co., an accident was defined as something fortuitous and unexpected. This latter was an insurance case.

In a recent case of Trim Joint District School and Kelly, the House of Lords decided (4 to 3) that the term "accident" included any injury not expected or designed by the workman himself, and that a premeditated injury inflicted on him in the course of his employment in pursuance of a criminal conspiracy against him, might be an accident within the Act. 83 L. J. P. C. 220; 30 T. L. R. 452.

The facts were that Kelly, who was an assistant teacher in an industrial school in Ireland, was mobbed to death by some of the pupils, who had conspired together to give him a beating.

One of the Learned Judges admitted that it would be out of place for the historian to say that Rizzio came to his death by an accident when he was stabbed by the conspirators in the presence of Mary Queen of Scots, but that, after all, from the general tenor of the Workmen's Compensation Act, it might be contended that the death of Kelly was accidental.

In France, where an elderly workman, while in the performance of his duty, rebuked a younger comrade, because of the dangerous manner in which he was attending to a steam-engine, and was assaulted and injured, the case was held to come within the Act. D. P., 1902, 2, 404.

In another case, at Douai, where a workman was struck by an object hurled at him by a comrade, who, through the requirements of the task they were working at, was placed near him, the Act was made applicable. D. P., 1901, 2, 85.

Factories, Etc.

The first section of the Act enumerates the factories and enterprises to which it applies.

The work of building comprises all the work necessary for the construction and completion of the house or other structure, from the masonry in the foundation to the fitting of the locks on the doors.

The Act refers to stone, wood, or coal yards. The expression in French is "Chantiers de pierre, de bois ou de charbon."

Wood yards and stone yards are enclosures where the wood or stone is cut and prepared for industrial or domestic purposes.

Quarries are not included in the term "stone yards," as they are particularly mentioned later on.

Wood yards should be distinguished from lumber yards, which are used for the piling of the produce of the mills.

It is somewhat difficult to understand why coal yards are also mentioned, as no work is generally done therein that requires the assistance of machinery moved by power other than that of men or of animals.

Transportation.—By land or by water, was held to include the driving of timber down a stream by the owner of the timber limits, where it had been cut, and of the mills towards which it was being floated.

Tremblay and Baie St. Paul L. Co. K. B. 21 R. J. 102.

The contrary had been held in the case of Vignault and Brouillard, 40 S. C. 27.

The Act is declared not to apply to navigation by means of sails.

The only explanation of this exception which I have been able to find is in Baudry-Lacantinerie, where it is

said that an accident to a sailing vessel would probably result in the drowning of all hands aboard, and would lead to the ruin of the owner if compensation to the widows and orphans were exacted of him.

In France, it must be remembered, that the Act does not apply to steamships, which are governed by a peculiar law of their own.

In Canada it is difficult to understand why one man should receive indemnity because he fell and injured himself while obeying the orders of the captain on board a steamship, while another man falling in the same way and under the same circumstances on a sailing vessel should be without recourse.

In MacGuckin vs. Pullman Car Co., 1914, the Courts held that a charwoman, employed by a Pullman Car Co. to sweep the cars upon their arrival at the terminus of a railway, could take advantage of this Act.

In England a barmaid at a railway station employed by the railway company was held not to be employed on, or in, or about the railway within the meaning of the Imperial Act, 1897; and a carpenter repairing a railway station was held not to come within the purview of the same Act.

Milner and G. N. Ry. Co. 67 L. J., Q. B. 427.

Pierce vs. London, etc., R. Co. 67 L. J., Q. B. 683.

The Act does not apply to agricultural industries; but if machinery moved by power other than that of men or of animals is employed on a farm for threshing or other like purposes, an accident happening to a workman and arising from the use of such machinery would fall within the purview of the Workmen's Compensation Act, as has been held frequently in France.

Municipal corporations which construct, for profit, drains, sewers, or water works have also been held to come within the meaning of the Act.

Bernier vs. Montreal, 13 P. R. 94.

And they have also been held liable to firemen injured while going to a fire.

Germain vs. Maisonneuve, 15 P. R. 145.

This latter decision was reversed at the trial by Mr. Justice Panneton, 1915.

Lumber camps or chantiers do not come within the meaning of the Act.

Provost vs. Gabriel L. Co. 11 P. R. 417.

Novico vs. Eddy Co. 12 P. R. 319.

The contrary was, however, held in Duquette vs. Cie de Pulpe Megantic, 12 P. R. 359.

Not only must there be a contract—not only must there be an accident in some one or other of the industrial establishments referred to—but the accident must have happened by reason of, or in the course of the employment.

It is a primary element that the workman be, at the time of the accident, under the authority and control of the employer.

The accident is said to have arisen by reason of the work, when the latter is its direct and immediate cause, as where a man cuts himself with an axe he is wielding. The accident is said to have arisen in the course of the work if it is due to the machinery, to the action of other employees with whom the workman is obliged to labour, or when it is due to the forces of nature provoked or aggravated by the work to be done.

In England it has been held that the workman must be doing substantially what he was employed to do, or, to put it otherwise, must be acting in the sphere of his employment.

The case of the Dominion Quarry Co. and Morin, 21 K. B. 147, was one of the first to come before our Courts. Morin was employed as assistant on the surface of a

quarry, his duties being to remove the dust and debris from about a steam drill. He was told by the foreman to go to another part of the surface to attend to another drill there. Instead of going directly to the place pointed out to him, he went down a depth of some 30 feet into the interior of the quarry, where men were busy hoisting crushed stone into carts by means of machinery. The workmen noticed him and told him to move away from where he stood, as he was in danger. He replied that there was no danger, and the words had scarcely left his lips before something broke, and he was crushed to death under a basketful of stone. Chief Justice Jetté dissented from the judgment in appeal; but the majority of the Court held that inasmuch as the accident happened in the quarry where Morin was working, his employer must be held liable under the Act; but inasmuch as he had been guilty of inexcusable fault because of his refusal to move away from the place of danger, the amount of the indemnity was reduced. The question of intentional wrong was raised, but was brushed aside by the Court.

It would be very difficult to justify this decision in view of countless judgments given in the Courts of England, and other judgments rendered by the Courts in France.

Morin was loitering, was not engaged at his work, was not in the *sphere* of his employment, and the fact that he was killed in the quarry is not sufficient to make his employer responsible. Had he met his death while going from one steam drill to another in search of a match, or a drink of water, his employer might be held liable; but he leaves the department of the industry with which he was connected, goes down into another department with which he had nothing to do, and is killed there because of his own stubborn negligence. No

wonder that accidents are said to have increased 45% wherever Compensation Acts have been introduced.

In Coderre vs. Corp. of Sherbrooke, 43 S. C. 201, a different conclusion was arrived at in Review. There a blacksmith employed by the defendant was going through the common yard to his work, when he was told that there would likely be no work that day. Thereupon he went to the power house, through curiosity, apparently, and before beginning to work. He opened the door, and while looking about him to discover, probably, why the machinery was not in operation, he touched a live wire, and was killed. The Court held that he had no business to be where he was, and that, at all events, he was not then under the control of his employer, as he had not begun his daily task. This latter reason might have been omitted.

In Ledoux vs. Lucas, 43 S. C. 435, it was held that where a boy was told not to continue working at a particular saw, but to go to work elsewhere, and did not do so, and was injured, he might recover, as there was no actual disobedience, as the command was a mere direction.

The workman must prove the nature of the accident, and that it happened by reason of or in the course of the employment. If he gives different accounts of the happening upon different occasions he will be non-suited.

Durocher vs. Kinsella, 40 S. C. 459, in Review.

Death arising from the forces of nature, such as lightning, sunstroke, will be considered as accidental if there is a danger special to the employment, and one not common to the public in general.

Padzuk and Canada Cement Co., 22 K. B. 432, is a recent judgment of the Court of Appeals which has excited some comment.

Padzuk, with some 40 others, was in a quarry connected with the cement company's works near Montreal on a very cold day in the winter time. They were some 18 feet below the surface. A fire had been kindled outdoors so that the men at work could warm themselves now and again. The foreman told them that if they did not wish to continue working on account of the cold they might leave. Apparently one or two left. Padzuk, on his way home on board the cars after the day's work, felt the frost bite for the first time, and, after attending to the matter himself for some days, called in a doctor, but gangrene had set in, and the result was the loss of his leg. Three of the Judges maintained the claim for indemnity made by Padzuk on the ground that there was danger special to the employment and not common to the public in general. Two dissented.

In rendering judgment in Karemaker and S.S. Corsican, 4 Butterworth Workmen's Compensation Cases 295, Cousens-Hardy, M. R., said: "Halifax is a place where people do receive frost bites, and therefore it is proper and necessary to take care to guard against them. In that sense the liability to frost bites is one of the normal incidents to which everybody is subjected by reason of the severity of the climate."

Warner and Couchman, 81 L. J., K. B. 45; (1912) A. C. 35; H. L.

A point which does not seem to have been touched upon in the Padzuk case is that the man did not feel the bite or twinge of the frost until he was on board the cars on his way home, and beyond the premises where he had been working. There is no presumption in favour of the workman that the damage had been done during the employment.

As to sunstroke, every case reported shows that there was special danger attached to the work which was being

lone when the stroke fell, whether it was the case of a sailor painting a ship under the hot sun of Mexico, or a carter driving a heavily laden wagon on an exposed highway in extremely hot weather.

Blakey and Robson Eckford Co. (1912) S. C. 334.

Industrial diseases, caused by the unhealthy nature of the employment, though arising by reason of and in the course of the work, are not considered as accidents.

Accidents are due to an exterior cause and manifest themselves suddenly and violently, while industrial disease insinuates itself gradually, and there must be a definite event at a definite time to constitute an accident.

Dawbarn, W. C. Appeals, 1910-12, p. 75.

The burden lies on the workman to prove the contract, the accident, the nature of the work, and the fact that it happened by reason of or in the course of the work.

Indemnity.

The compensation to be allowed to the person injured consists of a rent, or of a proportion of his daily wages.

Where the accident causes a permanent and absolute incapacity, the person injured is entitled to a rent equal to one-half of his yearly wages, reckoning from the date of the accident, or from the date fixed by common accord, or by a judgment as being the date when the incapacity showed itself to be permanent.

Where the incapacity, though permanent, is partial only, the person injured is entitled to a rent equal to one-half the sum by which his wages have been reduced because of the accident.

In cases of temporary incapacity, the compensation allowed is equal to one-half the daily wages received at the time of the accident and up to the recovery of the victim, provided the inability to work has lasted more

than seven days. The payment of the one-half of the daily wages begins only on the 8th day after the accident.

The terms "absolute," "partial" and "temporary" incapacity can readily be understood. Complete blindness has been held to cause absolute permanent incapacity, as has also the loss of both arms. The loss of fingers, of a leg, or an arm, constitutes partial incapacity. Any incapacity which reduces the earning power of the victim by not more than two to five per cent. is not generally considered sufficient to warrant the payment of a rent. But see Kopyi vs. Jacobs Asbestos M. Co., 46 S. C., 466.

Temporary incapacity is that which is followed by a complete cure.

The last clause of Article 7322 says that the capital of the rent shall not, however, in any case exceed $2,000.00, except where there is inexcusable fault.

This clause was not in the Bill as originally prepared and submitted to the Legislature, but was added in committee.

In Ledoux and Lucas, 43 S. C. 427, and in McDonell vs. C. P. R., the Superior Court held that, under this clause, the payments to be made in cases of permanent incapacity should not exceed $2,000.00 in all.

The Court of King's Bench, in Macdonald and G. T. Ry., 21 K. B. 532, and in McDonell vs. C. P. R., 22 K. B. 207, decided that this clause was to be read as part of Section 7329, and was contradictory to clauses A and B of Section 7322, and did not limit the sum total of the rent, which should be a life rent. The Learned Chief Justice, in rendering judgment, acknowledged the difficulty that he found in interpreting the Act.

On the other hand, Mr. Justice Lavergne held that the payments to be made by the employer under clauses A and B of this Article, should not exceed a total sum of $2,000.00 in any case.

It is a well known principle of law that it is not allowable to add to or take away words from a Statute unless no sense can possibly be made out of the words used.

In order to reach this decision, the Court of King's Bench was obliged to add the word *Life* before the word *Rents*, to omit the word *however*, and to substitute for the words *in any case* the words 'in the case of Art. 7329.''

The word *Rents* used in a law does not necessarily mean *life* Rents. We have the authority of our Civil Code for saying that Rents may be either Perpetual, or for a Term, as well as for a life.

I cannot agree with the propositions set forth by the eminent counsel who represented the railway companies in these cases.

In one case a tender was made of the sum of $2,000 in full settlement.

In the other case, it was argued by the defence that inasmuch as a capital of $2,000.00 would not yield more than a certain annual rent, the Court could not condemn the defendant to pay a greater sum than $2,000.00 would produce.

These two contentions are diametrically opposed to Sections A and B, which require, not that a capital sum, but that a rent equal to 50% of the yearly wages, or equal to 50% of the sum by which the earning power of the workman has been reduced, be paid.

If we refer to the laws of other countries, especially to those of the younger states, the meaning of this clause restricting the capital of the rents to $2,000 is made apparent.

In British Columbia the law fixes the indemnity at 50% of the average earnings, not to exceed $10.00 per week, and the total liability not to exceed $1,500.00.

In the Cape of Good Hope the indemnity is fixed at a sum equal to 3 years' wages, not to exceed £600, in case of total incapacity, nor £300 in the case of partial incapacity.

In Manitoba the compensation must not exceed $1,500 in all.

In New Zealand the law says that the total liability of the employer is limited to £300.

In Saskatchewan the liability must not exceed the estimated earnings of the workman for three years, and is not to exceed $2,000 in any event.

In South Australia the indemnity is not to exceed one pound a week, and the total liability is not to exceed £300.

In New Jersey the total liability may not exceed 50% of the wages of the victim for not more than 400 weeks.

In Nevada payments are not to exceed $3,000 in any case.

In Washington it is enacted that in no case shall the sum to be paid for injuries or death exceed $4,000.00.

In Massachusetts the maximum period of payments is 500 weeks and the maximum total of payments is fixed at $3,000.

If we refer to Art. 7323, we find that where death ensues after the accident, the compensation cannot exceed $2,000.

Let us take the case of two men working together, earning the same wages, $1,000 a year-- one being unmarried and aged 21 years, the other a few years older, married and having three children of tender years.

The married man is killed in an accident, by which the unmarried man loses a leg, the loss of his earning power being estimated at 60%.

The latter's expectation of life, according to the Tables, would be 39 years, and the present value of an

annuity of $210, calculated at 5% and payable every three months, would be about $3,800.

The children and the widow of the married man would receive in all $2,000.00 only, with $25.00 to cover funeral expenses.

There seems to be no reason why, in one case, a valuable life should be estimated at $2,000, while in another, the loss of a leg and a consequent reduction of 60% of his earning power, should entitle the injured person to an indemnity which would cost his employer almost twice as much.

It seems to me that if the unmarried man were to receive an annual rental of $210, that is a rent equal to one-half the sum by which his earning capacity has been reduced, and such rent were continued until a capital of $2,000 had been exhausted, the requirements of Art. 7322 would be absolutely filled.

The word RENT would be given its full meaning, as would also the word HOWEVER, which must mean "notwithstanding what has been enacted by this article," and the three words IN ANY CASE.

If he receives $210 a year until a capital sum of $2,000.00 is exhausted, is he not put on an equal footing with the workman who requires that the capital be paid into the hands of some insurance company under 7329? And does he not get as much as the surviving widow and the three orphans of his comrade who was killed?

Some judges have been in the habit of ordering the payment of a capital sum of $2,000 under Section 7329, in all cases where the amount of the Rent is over $100, on the ground that a smaller capital would not suffice to meet the annual Rent. According to them the capital of $2,000 seldom, if ever, changes.

And some have gone to the extent of condemning the employer to pay in cash the rent accrued from the date

of the accident to the date of the judgment (two years having elapsed), and then condemning him to deposit $2,000 with an insurance company to meet a rent of $180 per annum.

We have supposed the case of two men falling victims to an accident. Supposing the same accident deprived a third man of his legs, his arms, his eyes, and left him an absolute wreck, permanently incapacitated from any and every form of labour. His salary at the time of the accident was also $1,000, as was theirs. It would seem just and equitable that the full sum of $2,000 should be granted him. In the case of his comrade who lost only his leg, and who retains 40% of his earning power, it appears to me to be unjust that he should receive as much. The capital of his Rent should be reduced proportionately, the standard being a total absolute disability represented at $2,000.00.

When our legislators adapted this Act from the French Law of 1898, they omitted to declare that the Rent should be a Life Rent, as it is stated to be in Art. 15 of the French Law.

It will be difficult, henceforth, to reconcile these judgments of the Court of King's Bench with the amendments adopted at the last session of our Legislature.

The Act, 4 George V., Chapter 57, says that certain doubts have arisen as to the effect that Articles 7323, 7324 and 7325 may have upon the Common Law rights of action, and that it is expedient to put an end to such doubts, and it proceeds to say that the person *injured*, or his *representatives*, may, at their option, demand the payment to themselves of the amount of the compensation, or of THE CAPITAL OF THE RENT, which shall in no case exceed $2,000, whether in case of death

or of incapacity, which would entitle him to an ANNUAL RENT, save in cases of inexcusable fault.

If the Honourable Judges of the King's Bench are right in their interpretation that the clause appended to Art. 7322 belongs to Art. 7329, we now have two appendices attached to this latter Article.

With all due deference to our highest Provincial Court, I humbly maintain that the intention of the Legislature was to follow the example of other legislatures, and to limit the liability of the employer to $2,000 in every ordinary case.

This Act imposes a new obligation upon the employer beyond those already existing under the Civil Code, a new obligation that neither he nor his workman may remove or reduce by mutual consent, and it seems to me that no laboured interpretation should be given to any of its clauses with the object of increasing it.

It is said that the Constitution of the United States of America has been honeycombed by judge-made law.

In the case of an accident causing death the compensation consists of a sum four times greater than the average yearly earnings of the deceased at the time of the accident, but shall not in any case exceed $2,000, or be less than $1,000.00 if no inexcusable fault is found. The Court, apparently, has no right to vary the result of multiplying the yearly wages by four except where the product would be less than $1,000.00, or more than $2,000.00, except in the case of inexcusable fault either of the workman or of the employer. This indemnity is payable to the consort, to the exclusion of the children and ascendants, and where there is no surviving consort the children under 16 years of age receive the indemnity, to the exclusion of the ascendants. Such is the reasoned decision of Mr. Justice Pouliot in Croteau vs. Victoriaville Furniture Co., 40 S. C. 44. A contrary decision

was rendered by the Court of Review at Quebec in Roberge vs. Jacobs Asbestos Co., 45 S. C. 304, but as the Learned Judges have abstained in this latter case from giving any reasons or authority for their decision, it may not be error to follow the decision of Mr. Justice Pouliot.

Ascendants, of whom the deceased was not the only support, cannot take the benefit of the Act. It is a pure question of fact whether the deceased was or was not such only support.

Dominion Quarry Co. and Morin, 18 R. L., N. S. 7.
Bernard vs. Davis, 42 S. C. 170.

That there are other persons bound by law to support the ascendants would not change the fact if they were not in the habit of contributing to their maintenance.

An orphan and only child of 14 years of age is entitled to the full indemnity under clause B.

Palmiero vs. G. T. R., 42 S. C. 435.

$25.00 is added in all cases for funeral expenses.

It was held in a recent case by the Court of Appeal that no action under the Common Law would lie in favour of an ascendant of whom the deceased was not the only support at the time of the accident.

Quebec Ry. L. H. & P. Co. and Lamontagne, 23 K. B. 12.

This judgment was reversed by the Supreme Court in December, 1915.

But by an amendment adopted at the last session of the Legislature it was enacted that nothing in this law concerning accidents to workmen should be interpreted as doing away with any of the Common Law rights of action belonging to any persons who are unable to avail themselves thereof.

A foreign workman cannot claim, under the Act, unless he resided in Canada at the time of the accident.

Any rent due him or his representatives would lapse if he or they ceased to reside here while the rent was being paid. The Common Law remedy, however, would remain to him and them.

I cannot conceive of a case where a rent would be due to representatives of a workman unless they were unpaid arrears falling due during his lifetime.

The word "representatives" used in this connection means the legal representatives, and not those who are mentioned in Article 7323.

Fault.

Compensation is not demandable where the workman caused the accident intentionally, that is, where he, while enjoying full liberty of action, does something of which he knows the *necessary* result will be the accident. A brakesman who, in spite of the orders of his superior officer, jumps from a train while it is in motion and is killed, was held not to be the victim of an accident arising out of or in the course of his work, and it was further held that his act was so inexcusable as to lead the Court to declare that he had brought about the accident intentionally.

Jette vs. G. T. Ry., 40 S. C. 204.

If either party has been guilty of inexcusable fault, the Court may increase or reduce the indemnity.

Definitions are always inadequate. The limitation of words is too great to enable one to reduce into the form of a few expressions all the cases that may evidence the existence of inexcusable fault.

Beaudry-Lacantinerie says it is nothing but our old Roman friend, "gross fault."

Curiously enough, Laurent, who wrote before this law was enacted, defines gross fault as an inexcusable

fault, which consists in the neglect of those precautions which everyone takes.

Mr. Justice Gervais, in Poirier vs. Le Grand, 22 K. B. 193, defines it as the act of a person, who, knowing the *dangerous* consequences thereof, voluntarily and without justification, does the thing to which the accident is due.

Others contend it is something more reprehensible even than gross fault.

However, the decision of each case as it presents itself must necessarily turn upon the appreciation of the evidence by the Court.

In the case of Poirier and Le Grand, the Court held the employer responsible for the inexcusable act of a co-employee when he, knowing that such co-employee lacked the skill or experience necessary for the position, put him to work with the victim of the accident.

The inexcusable fault of the foreman suffices to justify the condemnation of the employer to an increased amount.

Houle vs. Asbestos & Asbestos Co., 42 S. C. 176.

There is a discussion as to what constitutes inexcusable fault in the case already referred to of the Dominion Quarry Co. and Morin, 21 K. B. 147. See, also, Archambault and Labelle, 46 S. C. 387.

Only those whose salary does not exceed $1,000 can invoke the benefit of this Act.

The *compensation* payable to those whose salary exceeds $600 is made as follows: The compensation for the first $600 is made under the rule contained in Article 7322. Then it is calculated for the excess over the $600 in the same way and one-quarter of the latter amount is added to the former. This rule applies to all compensations, whether they consist of a capital sum, or of a rent.

Apprentices are assimilated to the workmen in the business who are paid the lowest wages.

Apprentices are those who are under a contract to work for their employer at some trade, in return for the teaching and remuneration they may receive from him.

Where a rent is payable, there are three ways of calculating the wages of the workman.

Firstly.—Where he has been employed in the business during the whole year before the accident, the wages are equal to the actual remuneration received in money or kind by him during such period.

Secondly.—If he has worked less than one year before the accident, his wages during the period of his work are added to the average remuneration received by workmen of the same class during the time necessary to complete the year.

Thirdly.—If the business is not continuous in its operation; take, for instance, the case of a sawmill, which is sometimes run only in the summer time, his wages are calculated according to the remuneration received by him while the work went on, added to any earnings received by him during the balance of the year.

The rules are well explained in Ledoux vs. Lucas, 43 S. C. 435, by Mr. Justice Martineau.

See Kopyi vs. Jacobs Asbestos M. Co., 46 S. C. 466.

The indemnity is payable within one month of the death of the workman, or within one month of the agreement arrived at between the parties, or within one month of the judgment condemning the employer, and the Law adds that at the option of the person injured or of his representatives, the employer must pay the capital of the rent to an insurance company.

It is difficult to understand how the workman's representatives would have the right to demand the payment of the capital of a rent. The rent would not survive the workman. The word "representatives" may

mean, however, his curator. It certainly does not mean his heirs-at-law or his legatees.

In Blanchette vs. Black Lake Cons. Asbestos Co., 20 R. J. 605, it was held that the workman had the right to select the insurance company to which the capital should be paid.

By an amendment to Article 7329, adopted last session, it was enacted: That the person injured, or his representatives, might, at their option, demand the payment to themselves of the amount of the compensation, or of the capital of the rent, which should in no case exceed $2,000, whether in case of death or of incapacity, which would entitle him to an annual rent.

It is really astounding that the Legislature should have sanctioned such a law. It may well be doubted whether this amendment was brought to the attention of the Prime Minister, whom we all respect for his learning, at least, and yet he, as Attorney-General, must have been consulted.

The object of this whole legislation in every country where it has been introduced is to alleviate the state of the injured workman, and at the same time to save him from himself. He was not given the right to demand payment of a capital sum, but of a rent payable every three months. At most, he might ask, in France, that one-fourth of the capital should be paid him. It was known and felt that, in many cases, Improvidence, if not worse, would cause the rent and capital and all to disappear in a few months, if not days. In one case which came under my own observation, a needy workman who was absolutely incapacitated by an accident from ever earning anything again, spent the whole of the sum received by him from an accident insurance company in the purchase of a piano to amuse himself, and of a set

of furs for his wife, and he had a large family of little children.

There is, furthermore, gross injustice to the employer in this amendment.

Section 7346 gives the employer the right to have the amount of compensation revised at any time during four years.

Of what use would a revision be in the case of a workman who has nothing, and who has, perhaps, swallowed the capital of his rent?

If the capital is exigible, what becomes of section 7332, which says the indemnity is unalienable? Of what use is a subsequent medical examination under section 7338?

The amendment is obnoxious to the dominant idea of all such legislation, and should disappear before it has done much harm.

All compensations are unalienable and exempt from seizure. They are secured by special privilege upon the employer's property.

Rents are payable quarterly, and in case of temporary incapacity, the indemnity is payable at the same time as are the wages of the other employees.

Workmen who come under the provisions of the Act, and their representatives mentioned in Article 7323, have no further or other claim for compensation against the employer than that which is given by this law, but they re in their recourse under the Common Law against the person responsible for the accident other than such employer, his servants or his agents, any sum recovered by them against such other person to be applied in diminution of the amount payable by the employer under this Act.

There are numerous other details of the law concerning compensation to workmen which have not been

touched upon, as they are of minor importance, and too much time has already been taken up by the consideration of the principal enactments of the law.

Procedure.

The procedure to be adopted is set forth with some detail in the text of the Statute.

It has been held, under Article 7347, that it is the duty of the Judge to grant leave to sue in all cases where the parties fail to reach an understanding.

Krasno vs. Loomis, 11 P. R. 432.
Duguay vs. Can. Iron Corp., 15 P. R. 290.
Bonidetti vs. C. P. R., 13 P. R. 236.
Germain vs. Maisonneuve, 15 P. R. 145.
McMullin vs. G. T. R., 13 P. R. 175.
Caille vs. Montreal, in Review, 15 P. R. 174.

No right of appeal from the decision of the judge exists. Donaldson vs. Defoy, 17 R. L. 448, K. B.

In the absence of specific allegations and proof of facts disclosing inexcusable fault on the part of the employer, permission will not be granted to sue for an increased indemnity.

Krasno vs. Loomis, 11 P. R. 432.

The claim of the workman and of his representatives is prescribed by the lapse of one year from the date of the accident, and this prescription is not interrupted by the service of the petition.

Ruffinen vs. Que. St. Maurice Ind. Co., 46 S. C. 400.

There are several omissions in our Law which should be remedied by legislation.

In the first place, the Law should fix a time within which notice of the accident should be given to the employer.

Secondly.—A medical expert should be named to examine the workman at the time of the accident, and to sit as an assessor with the Judge. We all know how medical experts vary in their appreciation of the extent of injuries and their consequences.

Thirdly.—The law should grant free access to the Courts to all parties under this Act. Our Legislature has been most charitable with the moneys of the employer, but has refrained from extending the same kindly spirit where the revenues of the country are concerned. In France all the Courts are open, even the Courts of Appeal, to the workmen, without fee or stamp, and the officers are paid, out of the *general funds*, the fees which are fixed by Order-in-Council.